

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No.

04 10868 WGY

FRANK PRUCHNIK

Plaintiff

vs.

ROBERT BUERKLE GmbH & CO.

Defendant

MAGISTRATE JUDGE Alexander

COMPLAINT AND DEMAND
FOR JURY TRIAL

RECEIPT # 55623
AMOUNT 150
SUMMONS ISSUED YES
LOCAL RULE 4.1 YES
WAIVER FORM YES
MCF ISSUED YES
BY DPTY. CLK. FOV
DATE 4-30-04

PARTIES AND JURISDICTION

1. Plaintiff, Frank Pruchnik, is an individual who resides in Rochester, County of Plymouth, Massachusetts.

2. Defendant, Robert Buerkle GmbH & Co. (hereinafter "Buerkle"), is a business entity which does business in Germany with a usual place of business at Stuttgarter Strasse 123, D-72250, Freudenstadt, Germany.

3. During the relevant period of time, the Defendant conducted business within the Commonwealth of Massachusetts and Plaintiff's cause of action arose from this Defendant causing tortious injury within Massachusetts. This Defendant did and does solicit business and engages in a persistent course of conduct or otherwise derives substantial revenue from the sale

of goods in Massachusetts. The Defendant produced, distributed and sold a finishing machine to a business in Massachusetts where it caused tortious injury to the Plaintiff.

COUNT I: NEGLIGENCE

4. At all times herein concerned, the Defendant was engaged in the business of manufacturing, assembling, processing, distributing and selling finishing machines.

5. Prior to December, 2002, Defendant sold to Franklin Fixtures a Buerkle finishing machine (hereinafter the "machine").

6. On or about December 17, 2002, the Plaintiff, during the course of his employment for Franklin Fixtures, was working on said machine.

7. While the Plaintiff was cleaning said machine, his hand was pulled into the machine and severely injured.

8. The machine had to be in the on position while employees, including Plaintiff, were cleaning the machine so that the rollers within the machine were turning.

9. The injuries sustained by the Plaintiff were the direct and proximate result of the negligence of the Defendant, Buerkle. Said negligence included, but is not limited to, the following:

- a. The Defendant negligently designed, developed, tested, manufactured, assembled, inspected, marketed, promoted, advertised, sold and/or distributed the said machine.
- b. The Defendant negligently failed to warn, instruct, adequately warn or adequately instruct users of the machine, and particularly this Plaintiff, of the dangerous properties and design of said machine and the proper method of using same.
- c. The Defendant negligently failed to equip said machine with adequate safety or other prophylactic devices or take reasonable safety precautions to prevent injury to users of said machine, and particularly to the Plaintiff.

10. As a direct and proximate result of the said negligence, the Plaintiff was seriously and permanently injured, suffered great pain of body and mind, and was required to expend monies for medical care and attendance and was unable to work, or otherwise attend to his usual practices, for a prolonged period of time.

WHEREFORE, the Plaintiff demands judgment against the Defendant, Robert Buerkle GmbH & Co., in an amount deemed just

and appropriate by the trier of facts, together with costs and interest.

**COUNT II: BREACH OF EXPRESS AND IMPLIED WARRANTIES OF
MERCHANTABILITY**

11. The Plaintiff realleges each fact set forth in Paragraphs 1 through 10 of his Complaint and incorporates them herein.

12. The Defendant, Buerkle, expressly and impliedly warranted that the machine was safe, merchantable, and fit for its intended and reasonable use. The Defendant, Buerkle, breached its warranties to the Plaintiff because the said product was unsafe, not of merchantable quality and unfit for its intended and reasonably foreseeable uses and purposes.

13. The Plaintiff relied on the said warranties made by the Defendant, Buerkle, and as the direct and proximate result of the reliance on the said warranties and as the direct and proximate result of the breaches of said warranties by the Defendant, the Plaintiff was seriously and permanently injured, suffered great pain of body and mind, and was required to expend monies for medical care and attendance and was unable to work or otherwise attend to his usual activities for a prolonged period of time.

WHEREFORE, the Plaintiff demands judgment against the Defendant, Robert Buerkle GmbH & Co., in an amount deemed just and appropriate by the trier of facts, together with costs and interest.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Respectfully Submitted,
By Plaintiff's Attorney:

 (PRT)

MARTIN KANTROVITZ, ESQ.

(BBO #258200)

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